



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
COUNTY OF ACCOMACK
FOR
WALLOPS RESEARCH PARK
Unpermitted**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the County of Accomack regarding the Wallops Research Park, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Accomack" means the County of Accomack, a political subdivision of the Commonwealth of Virginia. Accomack is a "person" within the meaning of Va. Code § 62.1-44.3.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
6. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
7. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
8. "Property" means the Wallops Research Park located adjacent to the NASA Wallops Flight Facility and the Mid-Atlantic Regional Spaceport in Accomack County, Virginia, leased to the County of Accomack and owned by the United States federal government.
9. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
10. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
11. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
12. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
13. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
14. "USACE" means the United States Army Corps of Engineers.
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.
17. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Accomack leases and is the developer for the Property, a 200+ acre aerospace and aviation industrial park located in Accomack County, Virginia.
2. On March 10, 2014, the USACE issued a Jurisdictional Determination which identified the limits of waters and wetlands at the Property;
3. On April 10, 2015, Department staff inspected the Property for compliance with the requirements of the State Water Control Law and the Regulations and made the following observations:
 - a. Approximately 450 linear feet of an intermittent stream channel, a surface water that discharges to the Wattsville Branch, and associated forested buffers had been cleared of vegetation up to the banks of the channel and graded;
 - b. Acceleration of pre-existing and previously documented bank erosion and sediment deposition in the perennial stream channel downstream of the intermittent stream described in 3.a above was observed; and
 - c. Approximately 450 square feet (0.01 acres) of brown sediment filling an area of tidal wetlands down slope from the discharge pipe of a storm water pond.
4. Accomack does not have a Permit for the impact of state waters and/or wetlands at the Property and no Permit application has been submitted.
5. Va. Code §62.1-44.5, §62.1-44.15:20 and 9 VAC 25-210-50 prohibit impacts to state waters without a Permit issued by the Director.
6. On April 29, 2015, DEQ issued Accomack a NOV for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
7. On May 28, 2015 and June 17, 2015, Department staff met with representatives of Accomack to discuss the NOV.
8. On June 18, 2015, Accomack submitted a Corrective Action Plan ("CAP") to address the violation described in paragraphs C(3) and C(4), above. Accomack submitted a revised CAP on July 14, 2015 and August 14, 2015 in response to Department staff's comments.
9. DEQ approved the revised CAP on September 22, 2015.
10. On January 29, 2016, DEQ met with representatives of Accomack to discuss the NOV. During the meeting, Accomack reported the impacts to wetlands in C(3)(c) above had increased since the issuance of the NOV.

11. On February 2 and 5, 2016, staff inspected the Property for compliance with the, requirements of the State Water Control Law and the Regulations and made the following observations:
 - a. Approximately 7000 square feet (0.16 acres) of brown sediment filling an area of tidal wetlands down slope from the discharge pipe of a storm water pond.
12. On February 18, 2016, DEQ issued Accomack a NOV for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
13. On February 22, 2016, Accomack submitted a revised CAP to include the violations noted in C(11), above.
14. DEQ approved the revised CAP on February 29, 2016.
15. Based on the results of the inspections and the May 28 and June 17, 2015 and January 29, 2016 meetings, the Board concludes that Accomack has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 as described in paragraphs C(3), C(4) and C(11), above.
16. In order for Accomack to return to compliance, DEQ staff and representatives of Accomack have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Accomack, and Accomack agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$19,337.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Accomack shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Accomack shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Accomack for good cause shown by Accomack, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the NOV's dated April 29, 2015 and February 18, 2016. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Accomack admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Accomack consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Accomack declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Accomack to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Accomack shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Accomack shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Accomack shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Accomack. Nevertheless, Accomack agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Accomack has completed all of the requirements of the Order;
 - b. Accomack petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Accomack.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Accomack from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Accomack and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Accomack certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind

Accomack to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Accomack.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Accomack voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2016.

Maria R. Nold, Regional Director
Department of Environmental Quality

The County of Accomack voluntarily agrees to the issuance of this Order.

Date: 03/18/16 By: _____

(Person)

(Title)

County of Accomack

Commonwealth of Virginia

City/County of Accomack

The foregoing document was signed and acknowledged before me this 18th day of

MARCH, 2016, by STEVEN B. MINER who is

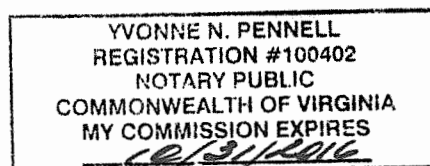
County Administrator of the County of Accomack, on behalf of the County of Accomack.

Yvonne N. Pennell
Notary Public

100402
Registration No.

My commission expires: 10/31/2016

Notary seal:



APPENDIX A

SCHEDULE OF COMPLIANCE

Accomack shall:

1. Within 30 days of the effective date of this Order, submit to DEQ for approval, a schedule for implementation of the CAP ("Schedule") described in paragraphs C(8), C(9), C(13) and C(14) of this Order. Accomack shall respond to any DEQ Notice of Deficiency regarding the CAP within 14 calendar days.
2. Upon DEQ approval of the Schedule, Accomack shall begin implementation of the CAP in accordance with the Schedule. Any changes to the approved CAP or Schedule shall not be initiated without advance notice to and approval by DEQ. Accomack shall complete the CAP in accordance with its terms.
 - (a) If the success criteria specified in the CAP are not achieved at the end of the applicable monitoring period, then Accomack shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, Accomack shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by Accomack in accordance with the schedule set forth in the alternative CAP.
 - (b) If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then Accomack shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. Accomack shall respond to any DEQ Notice of Deficiency to the proposal in accordance with the terms of the notice. Accomack shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.
3. Unless otherwise specified in this Order, Accomack shall submit all requirements of Appendix A of this Order to:

Regional Director
VA DEQ – Tidewater Regional Office
5636 Southern Blvd
Virginia Beach, Virginia 23462